# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CRIMINAL REVISION APPLICATION No. 382 of 2005

**For Approval and Signature:**

**HON'BLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KARISHMA BIPINKUMAR JADAV - Applicant(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

HL PATEL ADVOCATES for Petitioner No(s).: 1.

Mr.LR Pujari, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 1.

MR PR NANAVATI for Respondent No(s).: 2.

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**CORAM : HON'BLE MR.JUSTICE C.K.BUCH**

**Date : 05/08/2005**

**ORAL JUDGMENT**

1. Rule. Service of Rule is waived by ld. APP Mr. Pujari for respondent No.1 State and by ld. Counsel Mr. PR Nanavati for respondent No.2. On consent, Rule is fixed forthwith.

2. Heard ld. Counsel Mr. Asim Pandya for HL Patel Advocates for the petitioner, ld. APP Mr. Pujari for respondent No.1 State and ld. Counsel Mr. PR Nanavati for respondent No.2 i.e. father of the minor victim at length.

3. There is some strength in the say of ld. Counsel Mr. Pandya appearing for the petitioner that the ld. Sessions Judge could not have mechanically transferred a part-heard criminal case pending in the Lower Court directly to the Fast Track Court, Baroda in exercise of the powers vested with the court under section 408 of CrPC. The investigating officer who is present in the Court has attempted to clarify the situation as to two different cases placed by him in both the Courts under two different charges through ld. APP Mr. Pujari, and his version is that firstly a theft was committed and thereafter the stolen car was used in kidnapping of the minor victim Ashutosh Ashok Shah aged about 15 years. Undisputedly, the Court of Sessions can not try a case unless committed to the Court of Sessions and the accused persons who are already facing the charge as well as to some extent trial in the Magistrate Court, whether can be asked to face criminal trial in a new trial totally in different context which is yet to begun, is a question

which requires to be addressed.

4. Power to exercise jurisdiction to transfer a criminal case pending in subordinate Court administratively by ld. Sessions Judge is one thing and passing of an order of transferring pending trial issuing direction to conduct a trial with other case as joint trial is totally a different thing. It is true that the Court of Sessions or the Court constituted as Fast Track Court for early disposal of criminal cases is the "criminal court" within the scheme of CrPC. According to ld. Counsel Mr. Nanavati, Sessions Judge is competent to transfer even a part-heard criminal case and direct the Presiding Judge of FTC to try both the cases simultaneously and in a consolidated manner as a single trial and no jurisdictional error has been committed. A trial "consolidated" and one single trial of two or more offences committed in same transaction in one motive, both are different concepts and it appears that the ld. Sessions Judge, though had intended to see that the entire trial requires to be conducted as one trial, though two chargesheets are filed, he had directed to try these two criminal cases by consolidated trial.

5. It has been observed by the Apex Court in the case of **Balbir v/s State of Haryana & Anr., reported in**

**1999(4) Crimes 289 (S.C.)** thus;

" We would, therefore, extract clauses (a) and (b) in Section 223 as under:-

" The following persons may be be charged and tried together, namely:

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of different offences committed in the course of the same transaction."

In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject matter." It is pertinent to point out that the same expression is employed in Section 220(1) of the Code also (corresponding to Section 235(1) of the Old Code). The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1). It is so understood by this Court in

State of Andhra Pradesh v/s Cheemalapati Ganeswara Rao & Anr.” The following observations in the said judgment is contextually quotable:

> “ The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression “same transaction” alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression “same transaction” occurring in clauses (a), (C) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes.”

That one offence in two part is committed i.e. (i) stealing of the motor car, and (ii)using the said car in kidnapping for ransom. The Apex Court, in the case of **Mohan Bhaitha & Ors. V/s State of Bihar & Anr., 2001(2) Crimes 83 (SC),** has observed thus:

" It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form part of the same transaction or not. Therefore, a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria."

6. As ld. Counsel appearing for the parties have not pressed for detailed reasons, this Cri. Rev. Application ably can be disposed of by this Court by issuing appropriate directions observing that order passed by ld. Sessions Judge is bad in view of the scheme of CrPC. Ld. Sessions Judge ought to have said that in view of the language of the report submitted by the police under section 178(3) of CrPC, so far as CR No. I.124/2003 registered with Jawaharnagar Police Station, Vadodara is concerned, it is clear that the car lifted by the accused named in the chargesheet was for the purpose to use subsequently in a grave offence of kidnapping of minor Ashutosh and it was actually used. It is is apparently clear from the papers of investigation that this aspect was brought to the notice of the ld. Sessions Judge , when it is observed that some witnesses and documents are same including the panchanama, then both the offences can be said to have been committed in one transaction. It would be more appropriate to observe that the ld.Sessions Judge could have directed the concerned Magistrate to commit the case to the Court of Sessions as offence of theft of car is found made in same or one single transaction and thereafter he could have transferred that case to the Court where kidnapping case was pending. It was also possible to give directions to

the Investigating Officer to investigate in to the matter and ascertain whether the theft of the car was committed by the accused persons under a larger conspiracy that probably might have been hatched by all the accused persons. The investigating agency may file a supplementary report for the purpose by placing necessary evidence direct or circumstantial if collected. Even otherwise in absence of such formal further report, the ld. FTC Judge could have been asked to decide both the cases as consolidated cases otherwise as one single trial.

7. For the purpose, the matter can be remanded back to the Court of Sessions, but to avoid multiplicity of the proceedings, the Court is inclined to pass the following order:-

1. That the impugned judgment and order dated 16.05.2005 passed by ld. District & Sessions Judge, Vadodara, in Cri. Misc. Application No. 47/2005 is hereby quashed and set aside and Criminal Case No. 447/2003 is restored to the file of ld. JMFC, Vadodara.

2. The ld. JMFC, Vadodara conducting the Criminal Case No.447/2003 shall commit the case to the Court

of Sessions in exercise of the powers vested with the Court under section 209 of CrPC, being a case arising out of one transaction of which one another case arising out of that very transaction/incident is pending. The ld. Sessions Judge is directed to see that the case so committed is transferred to the Court where kidnapping case of minor Ashutosh is pending for trial.

3. The investigating agency is directed to investigate further, if need be, and ascertain whether the car was lifted and offence of theft of car was committed with one ulterior motive and to use the same for the purpose of kidnapping under a conspiracy and if the investigating officer subjectively satisfies, he may submit the supplementary report to the concerned Court and the trial Judge, in turn, on receipt of such report, may try the case as one trial against all the accused persons who have been chargesheeted or who may be chargesheeted recording the charge and frame distinct charges in light of the case placed by the prosecution.

8. It is clarified that the statements of the witnesses

recorded by ld. Magistrate shall have no legal bearing on the Sessions trial and they shall have to be treated previous statement of respective witnesses for the purpose of Sessions trial that may be conducted after the formal committal of first case. It is very likely that after report of further investigation, ld. Trial Judge may have to try both the cases as two by consolidated cases as one trial recording evidence in one case. Further investigation if made by the investigating agency shall be completed within 30 days from today and report may be submitted to the concerned trial Court directly so that the Court may proceed further with the trial.

9. Zerox certified copy of the chargesheet of the offence registered with Jawaharnagar Police Station, tendered today by ld. APP Mr. Pujari, is taken on record and is considered while passing this order.

10. Till this exercise, formal trial of both the criminal cases shall remained stayed.

11. With above observations and directions, present Rev. Application is allowed. Rule is made absolute in above terms and directions.

D.S. Permitted.

(C.K. BUCH, J)

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